

Nigerian Constitution: A Clog in the Wheel of Sustainable Governance

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Abstract: *The most important statute in any democratic setting is the constitution. It is always referred to as the grundnorm, it is the foundation upon which all other laws stand. Unlike the previous constitutions, the constitution of the Federal Republic of Nigeria 1999 as amended was drafted without wide consultation across the nation. It was imposed by the departing military in 1999 without the benefit of a plebiscite, referendum or national conference. Today, most of the problems facing the country were as a result of the inelegant drafting of the constitution. The draftsmen of the 1999 constitution merged statutory law, regulatory law, administrative law etc into what they called a constitution. What we have now in Nigeria is not a constitution per se but a conglomeration of every form of law in one form of law. This paper seeks to examine the shortcomings of the constitution which are clogs in the wheel of sustainable governance in Nigeria. Some of these shortcomings examined by this paper are the electoral matters, appointment of judicial officers, divisions of taxing powers, immunity clause, concentration of power at the central and the provisions of chapter two of the constitution among others. The paper suggests the scrapping of the 1999 constitution as it was not written by the representatives of Nigerians. The constitution was grudgingly reviewed last year when minimal amendments incorporating political reforms and recognition of National Industrial Court were implemented. But this reform was a tip of an iceberg compared to much more fundamental issues begging for attention. The paper suggests solutions to the problems identified and consequently, the paper concludes that cogent steps must be taken by the legislature to ensure that a new constitution is drafted to pave way for sustainable governance in Nigeria.*

Keywords: constitution, clog, wheel, governance.

1. Introduction

The Nigeria story began in 1914 with the Fredrick Lugard Constitution. The 1914 constitution amalgamated the colony and protectorate of Southern Nigeria with the Protectorate of Northern Nigeria under the Colonial authority of the British Monarch through her appointed agent referred then to as the Governor General. Eight years later, the 1914 constitution was replaced by 1922 Sir Clifford Constitution, then again the 1946 Constitution which defined Nigerian in terms of regions, the Northern, Western and Eastern Regions.

The 1951 Constitution which came into effect after due consultation with the people of Nigeria. Within three years, the constitution was replaced with the 1954 Constitution, the constitution made regional governments independent of the central government in respect of the subjects and legislative powers allocated to them and then the entrenchment of the tripartite regional system under the 1960 Independence Constitution.¹

Nigeria gained independence in 1960 and became a republic in 1963. From 1966 to 1999, a period of 36 years, Nigeria had an unstable political structure. The country finally returned to a democratic regime on the 29th May, 1999. Presently, Nigeria practices federal system of government comprising 36 states and its Federal Capital Territory, Abuja. The states are further sub – divided into 774 Local Government areas (LGAs).

2. The Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution of the Federal Republic of Nigeria (Promulgation) Act No 24. 1999 (as amended)² was introduced in 1999 and has remained in force till today. In January 2011, two amendments of the 1999 Constitution were signed by the former President Goodluck Jonathan. Unlike the 1951 constitution, there were

¹ S. T. Rotimi “Reinventing the Architecture of Nigerian Federalism” The Brown Journal of World Affairs, Vol 12. No 1 pp. 139 – 154

² Which shall be referred to as the 1999 Constitution in this paper.

no wide consultation with the people of Nigeria. The constitution was imposed by the outgoing military government and it contained many contentious which are clogs in the wheel of progress of Nigeria today.

2.1. Division of Taxing Power

Prior to the discovery of crude oil and other revenue generating natural resources in Nigeria, tax has been the major source of revenue for governments in Nigeria. However, upon the production and exportation of crude oil, taxation was abandoned and attention was shifted to the revenue generated from the sale of crude oil to the extent that the economy and the yearly budget is based entirely on the amount that may likely be generated from the sale of crude oil.

However, recently, attention has been gradually shifted from crude oil to taxes. While the federal government generates billions of Naira and smiles to banks on a daily basis the states in Nigeria,³ are impoverished as they still depend on the federal government for monthly allocation. This is due to the fact that the 1999 Constitution contains Exclusive Legislative list⁴ which the National Assembly can legislate upon to the exclusion of the states. The Items contain money generating items like mines and minerals, including oil fields, oil mining, geological surveys and natural gas,⁵ custom and excise duties,⁶ export duties,⁷ taxation of profits, income and capital gains⁸ etc. Apart from the fact that the Exclusive legislative list is reserved only for the federal government, the item in the Concurrent Legislative List⁹ is also shared between the federal and state governments. Furthermore, section 4 of the 1999 Constitution provides that if any law made by a House of Assembly is inconsistent with that of the National Assembly, the law made by the National Assembly shall prevail and that of the House shall be declared null and void. This connotes that the National Assembly has the power to pick and choose from concurrent list.

The Nigerian Federal system is the oldest on the African Continent. It was established in 1954, a few years before the establishment of the short lived “Mali Federation” comprising Mali and Senegal, 1958 – 1960.¹⁰ Nigeria operates a fiscal system whereby all the revenue of the federal government are pooled together in the Federation Account and distributed among the three arms of government based on a formula that is exclusively determined by the National Assembly.¹¹ Section 162 (1) of the 1999 Constitution provides as follows:

The Federation shall maintain a special account to be called “the Federation Account” into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.¹²

2.2. Fundamental Objective and Directive Principle on State Policies

Chapter two of The 1999 Constitution is titled “Fundamental Objectives and Directive Principles of State Policy. The chapter starts with section 13 which provides that it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative , executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution. The chapter contains certain

³ With the exception of Lagos State.

⁴ Part 1 of the Second Schedule

⁵ Item 39

⁶ Item 16

⁷ Item 25

⁸ Item 59

⁹ Part 2 Second Schedule

¹⁰ Ladipo A., (2005) *The Nigerian Federation at Crossroads: The Way Forward* (Oxford University Press, Publius, Vol. 35, No 3 p. 383 – 405.

¹¹ Sanni A.O. (2015) ,An Appraisal of Legal Framework for Taxation in Nigeria , Vol 34, *Journal of Law, Policy and Globalisation*, pp.82 – 86.

¹² Section 162 (1) 1999 Constitution.

rights such as right to adequate medical and health facilities for all persons,¹³ rights to equal pay for equal work without discrimination on account of sex or on any other ground whatsoever,¹⁴ free compulsory and universal primary education,¹⁵ free University education,¹⁶ and free adult literacy programme.¹⁷ (2015) Vol. 34, *Journal of Law, Policy and Globalisation*, pp 82-86.

It is however unfortunate that the rights mentioned above are not justiceable and not legally enforceable in any court of law in Nigeria. Section 6(6)(c) of the constitution provides that the judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation. Unlike the rights enshrined in chapter four of the constitution which are justiceable and legally enforceable, the rights contained in chapter two are mere tiger papers as they cannot be enforced in any court of law in Nigeria.

2.3. Insecurity and the Demand for Creation of State Police

Crime occurs daily in Nigeria, since 1999, terrorism and inter-communal clashes in various parts of the country have displaced over three million and led to the deaths of more than 14,000 people. Plateau state recorded the highest number of internally displaced persons (IDPs) in the country since the return of civilian rule in 1999 up to the year 2004. While an estimated one million Nigerians were displaced by internal conflicts between 1999 and 2004, fighting in Plateau State between February and May 2004 alone generated some 250,000 internally displaced persons.¹⁸

On the 16th February 2006, over 50 people, mostly Christians were killed and many buildings destroyed by rioting Muslims because of cartoons about Prophet Muhammad in the Danish newspaper. Between 28th – 29th November 2008, religious riots between Christians and Muslim over the result of a local election in Jos led to the death of 381 people¹⁹. Islamic militants known as ‘Boko Haram’ (which means ‘western Education is a sin’) killed over a thousand people between 26th – 29th July 2009 and during the violence, Christians were killed for refusing to convert to Islam²⁰ and in 2010, a religious riot broke out in Jos and 992 people, mostly Christians were massacred²¹. On the 26th August 2011, Boko Haram attacked a United Nations building and over 100 people were killed²². On the 20th of January 2012, Boko Haram attacked Churches and Christian businesses in Kano, over 185 people were killed²³. At 1.00Am on the 29th September 2013, suspected gunmen from Boko Haram entered the male dormitory in the College of Agriculture in Gujba, Yobe state killing at least 44 students and teachers²⁴. Two bombs exploded in a crowded station in the outskirts of Abuja on the 14th April 2014, 71 people were killed²⁵.

A suicide bomber on a motorcycle drove up to the gates of a Christian church in the north – eastern city of Gombe on the 1st of January 2015 and detonated his explosive belt while worshippers were inside at a New Year mass, 8 people were taken to hospital for varying degrees of injuries. Between 3rd to 7th January 2015, Boko Haram militants opened fire on northern Nigerian villages at Baga, Borno states, leaving over 2000 people

¹³ Section 17(d) of the 1999 Constitution

¹⁴ Section 17(e) of the 1999 Constitution.

¹⁵ Section 18(a).

¹⁶ Section 18(b)

¹⁷ Section 18 (c)

¹⁸ Nigeria's Faltering Experiment, International Crisis Report (ICG) Africa Report N°119 - Dakar/Brussels, 25th October ICG. Available at www.crisisgroup.org. accessed last on the 6th January, 2017

¹⁹ “Nigeria: Jos Riots – Death tolls hits 400” Witness. Daily independent 1st December 2008. Available at <http://web.archive.org/web/20081203110450/http://allafrica.com/stories/200812011158.html> accessed last on the 28th December, 2016

²⁰ “Nigerian accused of Ignoring sect warnings before wave of Killings” London : The Guardian 2nd August, 2009.

²¹ Nossiter A. “Toll from Religious and Ethnic Violence in Nigeria rises to 500” The New York Times (8 March 2010) available at <http://www.nytimes.com/2010/03/09/world/Africa/09nigeria.html?ref=global-home&r=0>. Accessed last on the 28th December 2016

²² Nossiter A. “Islamic Groups says It was behind fatal Nigeria attack”. The New York Times August 28th 2011. Available at : http://www.nytimes.com/2001/08/29/world/africa/29nigeria.html?_r=0. Accessed last on the 28th December, 2016

²³ “Nigeria: More Bombs Found As death Toll Rises” Sky News (23 January 2012)

²⁴ Soffer, A. “Islamists Massacre 50 Students At Nigerian School” (29th September 2013) Available at : <http://www.israelnationalnews.com/wap/item.aspx?type=0&item=172300>. Accessed last on 8th December, 2014

²⁵ “71 Killed At A Bomb Blast at a Bus Station In Nigeria” Biharprabha News(14th April 2014). Available at: <http://news.biharprabha.com/2014/04/71-killed-in-a-bomb-blast-at-a-bus-station-in-nigeria/> Accessed last on the 28th December 2014

dead in what was described as the bloodiest attack of the militants²⁶. On the 5th day of July 2015 Boko Haram attacked villagers in Jos, 51 people were killed while 67 were injured. In Potiskum on the same day, militants killed 6 in a suicide bombing. Two days after, a suicide bomber blew himself up outside a government building in the city of Zaria, 35 people were killed while 32 people were injured. Between 2004 till date, over 14000 people have been gruesomely murdered by different insurgent groups in the North East of Nigeria while over 2 million people were displaced all over the nation as a result of this social unrest.

Since 1999, there has been a clamour for the establishment of State police force. This is as a result of the deteriorating situation of the security system in Nigeria. The geographical area of Nigeria is too large for a Central Police command. However, the 1999 constitution forbids the creation of state police. Section 214 of the 1999 Constitution provides that there shall be a Police Force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section, no other police force shall be established for the Federation or any part thereof.

In addition section 215(4) made it mandatory for the Inspector General of Police to seek for a direction from the President before carrying out any direction from the Governor of a state.²⁷

3. Immunity Clause

The doctrine of sovereign immunity is founded on a legal principle that the king can do no wrong. Section 308 of the 1999 constitution confers immunity from civil or criminal prosecution on Governors, their Deputies, the President and the Vice President. The Economic and Financial Commission (EFCC) saddled with the responsibility of preventing and prosecuting financial crimes have traced stolen billions of Naira to the account of many serving Governors but unfortunately they could not be arrested as a result of the immunity clause in the constitution.

4. The Way Forward/ Conclusion

The 1999 constitution is the grundnorm and the foundation upon which all other laws stand. It is recommended that the National Assembly should initiate the process of fashioning a new constitution for the people of Nigeria. There should be wide consultation across the country so that the aspiration, commitment values of different ethnic groups will be adequately addressed.

The draftsmen of the 1999 constitution fails to understand that Nigeria federal system is a partnership between the Central and the federating units. The new constitution should reflect the principles of true federalism so that fiscal independence of the federating units will be guaranteed as financial subordination put an end to federalism.

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²⁶ “Boko Haram killed 100 and 2000 people in Nigeria”. The Guardian, January 10, 2015.

²⁷ Sometimes in 2001, a riot broke out between Hausa community and Yoruba people in Sagamu, Ogun State early in the morning on Sunday around 6am. The Governor was informed around 7am and he directed the Commissioner of Police to mobilize his men to the scene of the riot, however, the Commissioner could not obey that order as it is mandatory for him under section 215(4) to seek an approval from the President who was then in Church and could not be contacted until 9am and at that time, the violence has reached its peak and hundreds of people have been killed.

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Author’s Biography

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He was the Head of Chambers, Faith Law Firm in 2011, He was a partner with Velma Solicitors, Abuja from 2012 – 2014. He later established Fountain Solicitors in 2014 which has remain till date as a private law firm. He joined Olabisi Onabanjo University as a Lecturer and was attached to the Department of Business & Industrial Law.

Mr. Oyekan is presently the Secretary, Department of Business and Industrial Law. He is also the Secretary, Curriculum Review Committee of the Faculty of Law, Olabisi Onabanjo University. He is also the Secretary, Quality Control Committee of the Faculty. His numerous publications include ‘Compensation for Victims of Crime in Nigeria’, ‘The Taxing Scheme under the 1999 Constitution: A Clog in the Wheel of Fiscal Independence of federating units in Nigeria.’, ‘Understanding the Rights of Prisoners in Nigeria’.